



WYOMING DEPARTMENT OF CORRECTIONS

Policy and Procedure #3.102 Inmate Disciplinary Procedures

Page 1 of 25

Authority: Wyoming Statute(s): 25-1-104 25-1-105 ACA Standard(s): 4-4227; 4-4228; 1-ABC-3C-02; 4-4229; 4-4230; 1-ABC-3C-03; 4-4231; 4-4232; 1-ABC-3C-04; 4-4233; 4-4234; 1-ABC-3C-06; 4-4235; 4-4236; 1-ABC-3C-07; 4-4237; 4-4238; 1-ABC-3C-08; 4-4239; 4-4240; 1-ABC-3C-09; 4-4241; 4-4242; 1-ABC-3C-10; 4-4243; 4-4244; 1-ABC-3C-11; 4-4245; 4-4246; 1-ABC-3C-12; 4-4247; 4-4248 1-ABC-3C-13; 1-ABC-3C-14	Effective Date: October 15, 2009 Revision/Review History: Summary of Revision/Review: Establishes a new policy and procedure for the inmate disciplinary process from the notice of charges through the disciplinary hearing, review, and appeal.
Cross Reference of Policy: P&P #1.014, <i>Investigations</i> ; P&P #3.009, <i>Evidence Collection and Chain of Custody</i> ; P&P #3.101, <i>Code of Inmate Discipline</i> ; P&P #3.302, <i>Administrative Segregation</i> ; P&P #3.305, <i>Temporary Restriction Order</i>	Supersedes Existing Policy: WDOC Code of Inmate Discipline(dated 03/01/1994, revised 01/29/2003)
Approved: R.O. Lampert Robert O. Lampert, Director	
7-15-09 Date	

APPROVED FOR INMATE DISTRIBUTION

REFERENCE

1. ATTACHMENTS

- A. WDOC Form #102: *Staff Report*
- B. WDOC Form #103: *Confidential Informant Evaluation and Information Form*
- C. WDOC Form #340: *Conduct Violation Report*
- D. WDOC Form #341: *Disciplinary Hearing Record*
- E. WDOC Form #342: *Inmate Disciplinary Appeal Form*

2. OTHER – None Noted



I. PURPOSE

- A. **Fair and Orderly Disciplinary Procedure.** The purpose of this policy is to establish uniform guidelines and procedures for inmate discipline which satisfy legal requirements by establishing due process and procedural safeguards for the imposition of disciplinary sanctions and providing a historical record of inmate behavior while providing for the safety and security of inmates and staff and maintaining order in Wyoming Department of Corrections' institutions.

II. POLICY

- A. **Provision of Due Process.** It is the policy of the Wyoming Department of Corrections (WDOC) that alleged violations of the inmate code of conduct shall be fairly processed, ensuring that all inmate due process rights are protected within the parameters of established law. WDOC staff members shall fairly and equitably enforce all departmental and institutional rules and shall apply discipline in an impartial and consistent manner.
- B. **Appropriate Sanctions.** It is the policy of WDOC that disciplinary sanctions will be proportionate to the seriousness of the offense and are dispensed with the purpose to enforce rules, promote safety, security and the general good order of the institution and to promote and reinforce positive behavioral outcomes.
- C. **Referral of Criminal Acts to Law Enforcement.** It is the policy of WDOC that administrative processing of inmate conduct violations shall be separate and distinct from any criminal investigation or prosecution for the same act. Where an inmate allegedly commits an act covered by criminal law, the case shall be referred to appropriate court or law enforcement officials for consideration for prosecution. (ACA 4-4231, 1-ABC-3C-03)
1. The conduct violation shall be processed according to the procedures established herein. Any delay caused by a criminal investigation or prosecution shall be documented in writing.
 2. When the charge is MJ25, *Violation of Laws*, the charge shall commence upon a conviction or finding of fault by a court of law. All other conduct violation charges shall commence upon observation or discovery of the act of misconduct, regardless of the criminal investigation or prosecution.

III. DEFINITIONS



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #3.102	Page 3 of 25
		Inmate Disciplinary Procedures

- A. **Conduct Violation Report:** A disciplinary report prepared by a staff member based upon knowledge or evidence that an inmate has committed a violation of federal or state law or violation of departmental or institutional rules. (*See WDOC Form #340.*)
- B. **Disciplinary Hearing Board:** A committee comprised of three (3) department staff members with at least one (1) uniformed correctional officer at the rank of sergeant or above. The disciplinary hearing officer will act as chair of the disciplinary hearing board.
- C. **Disciplinary Segregation:** A form of punitive segregation intended to separate an inmate found guilty of a conduct violation from the general population and to provide punitive consequences for the conduct violation. An inmate's property and privileges may be restricted by the correctional facility while the inmate is on disciplinary segregation.
- D. **Due Process:** A course of formal proceedings carried out regularly and in accordance with established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a neutral individual or tribunal with the power to decide the case. A due process hearing may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual. With due process, an inmate receives written rules to inform him or her about prohibited and expected behavior. An inmate accused of a conduct violation gets a written notice of charges, an opportunity to be present for the hearing, to make a statement regarding the charge(s), to present documentary evidence at the hearing, and to have witnesses give statements regarding the charge.
- E. **Hearing Officer:** A staff member designated by the warden to preside at a disciplinary hearing or to act as chair person of the disciplinary hearing board.
- F. **Informal Sanction:** An action recommended by the security supervisor assigned to conduct the interview with the inmate and charging staff member in lieu of formal disciplinary action. Informal sanctions are the result of information or counseling reports and are not to be considered formal inmate discipline. The sanction is to be informal, reasonable, and proportionate to the violation.
- G. **Pre-Disciplinary Segregation:** The confinement of an inmate accused of a disciplinary conduct violation until a disciplinary investigation or hearing is completed. Such detention shall not be punitive and shall be used only when necessary to ensure the inmate's safety or the security of the institution.



- H. **Security Supervisor:** A correctional officer with the rank of corporal or above.
- I. **Watch Commander:** Highest ranking uniformed officer in charge of the shift.
- J. **Witness:** Any inmate or staff member who was present at the incident or has direct knowledge of the circumstances of the conduct violation report. Staff members who have filed a staff report may use that report to substitute for their witness statement.

IV. PROCEDURE

A. General Guidelines

1. **Written Procedures.** The disciplinary procedures described in this policy shall govern inmate conduct rule violations. These rules shall be reviewed annually and updated if necessary. (ACA 4-4227)
2. **Notification to Inmates and Staff.** Chief Executive Officers (CEOs) shall ensure that all inmates and staff have reasonable access to this policy and procedure.
 - i. This policy and procedure shall be made available to all WDOC inmates through posting, individual distribution, or upon request from the inmate law library. A summary of the disciplinary procedure shall be included in the inmate rulebook. All WDOC inmates shall be provided with a copy of the inmate rulebook for their personal use during the reception and orientation period.
 - ii. WDOC inmates shall receive an explanation of the inmate disciplinary procedure when necessary, including the opportunity to have questions regarding the inmate disciplinary procedure answered.
 - iii. An inmate rulebook that contains all chargeable offenses, ranges of penalties, and disciplinary procedures shall be given to each inmate and staff member and shall be translated into those languages spoken by significant numbers of inmates (*i.e.*, ten percent (10%) or more of the inmate population). Signed acknowledgment of receipt of the rulebook shall be maintained in the inmate's file. When a literacy or language problem prevents an inmate from understanding the rulebook, a staff member or translator shall



assist the inmate in understanding the rules. (ACA 4-4228, 1-ABC-3C-02)

- iv. A copy of the inmate rulebook and/or this policy will be provided to employees and volunteers during their orientation period. All personnel who work with inmates will receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct, the rationale for the rules, and the sanctions available. (ACA 4-4229)

3. Disciplinary Hearing Officer and Hearing Board. Wardens will appoint staff for their correctional facility to serve as disciplinary hearing officers to preside at disciplinary hearings and impose the appropriate disciplinary sanctions. Disciplinary hearings may be held before a single hearing officer or a three (3) member board at the discretion of WDOC.

- i. Wardens will ensure that all hearing officers, hearing board members, and staff are trained in the disciplinary process and familiar with the provisions of this policy. (ACA 4-4229)
 - a. The disciplinary hearing officer shall be a supervisory staff member (*e.g.*, rank of sergeant or above, unit manager, program manager, or casework team leader). When feasible, it is recommended, but not required, that all members of a disciplinary hearing board be supervisory staff members.
- ii. Disciplinary hearings on rule violations are conducted by an impartial person or panel of persons. (ACA 4-4240) A hearing officer or any member of a hearing board shall not be involved in the rule violation for any hearing they conduct. (ACA 4-4230) If a staff member directly witnesses the alleged offense, was involved in or witnessed the events leading to and/or immediately following the offense, participated in the investigation of the offense, or is engaged in any activity which may compromise the ability to function objectively (*e.g.*, a family relationship between the hearing officer and a person involved in the offense), the staff member shall be precluded from serving as hearing officer or hearing board member.
- iii. The hearing officer or board shall administer an oath or affirmation to all parties testifying in a hearing that the information that they will present is true and accurate to the best of their knowledge. The hearing officer or board shall have the power to compel the



attendance of any WDOC employee, contract staff member, or volunteer who may have information relevant to the hearing. The hearing officer or board shall have the power to obtain copies of documents held by WDOC that will be used as evidence in the hearing.

4. **Time Frames.** Time frames identified in this policy and procedure will not include weekends and holidays except as indicated.
 - i. The disciplinary process, from the date the inmate is charged with a rule violation to the conclusion of the disciplinary hearing, will not exceed seven (7) days, excluding weekends and holidays, unless the hearing is prevented by exceptional circumstance, unavoidable delays, or reasonable postponements. (ACA 4-4238, 1-ABC-3C-07)
 - ii. Postponement or continuance of the disciplinary hearing for a reasonable period and good cause will be documented in writing and the justification will be attached to WDOC Form #340, *Conduct Violation Report*.
 - iii. When it is necessary to extend the time limits set forth in this policy and procedure, the inmate will receive documented notification of the extension.
5. **Segregation Prior to Hearing.** An inmate shall not be placed in punitive segregation prior to a hearing. However, pre-disciplinary segregation may be used for inmates who are charged with an inmate conduct rule violation. (ACA 4-4235) Pre-disciplinary segregation is a non-punitive form of separation of an inmate accused of a disciplinary conduct violation from the general population.
 - i. Pre-disciplinary segregation is an offender management tool that may be used for the separation of an accused inmate when the inmate poses a threat to the management, control, or safety of the correctional facility, staff, inmate population or the public at large.
 - ii. Pre-disciplinary segregation shall be considered a form of short-term administrative segregation under WDOC Policy and Procedure #3.302, *Administrative Segregation*. No inmate should remain in pre-disciplinary segregation longer than necessary.



- iii. When appropriate, an inmate may also be placed on temporary restriction order pursuant to WDOC Policy and Procedure #3.305, *Temporary Restriction Order*.
 - iv. The status of an inmate charged with a rule violation who is placed in pre-disciplinary segregation will be reviewed by the Warden or designee within seventy-two (72) hours, including weekends and holidays. (ACA 4-4235)
6. **Burden of Proof.** WDOC shall have the burden of proving an allegation of an inmate conduct violation in a formal disciplinary proceeding in accordance with the standard of the preponderance of the evidence. Preponderance of the evidence means that, on the whole, evidence is of greater weight or more convincing in favor of one position over the evidence offered in opposition to it (*i.e.*, evidence which as a whole shows that the fact sought to be proved is more probable than not). At the hearing, the inmate may plead “not guilty” or “guilty”.
7. **Evidence.** The hearing officer or board shall admit all reliable, non-repetitious evidence which is probative (*i.e.*, tending to prove or disprove) of the facts of the incident from which the charge arises. The hearing officer or board may exclude irrelevant, incompetent, or unduly repetitious evidence. Evidence shall be handled in accordance with WDOC Policy and Procedure #3.009, *Evidence Collection and Chain of Custody*.
- i. A description of physical evidence shall be included in WDOC Form #340, *Conduct Violation Report*. Any photographs or photocopies of the evidence shall be attached to the *Conduct Violation Report*. Physical evidence or replicas thereof may be presented at the hearing upon the hearing officer or board’s determination of necessity. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available.
 - ii. Information or documents that are gathered in preparation for the hearing shall not be considered evidence unless it is reasonably anticipated that they will be admitted as evidence at the hearing. An inmate’s right to review evidence only extends to that which will be used against him/her at the disciplinary hearing.
 - iii. Hearsay evidence may be admitted through the person to whom the statement was made if such evidence possesses probative value commonly accepted by reasonably prudent persons in the conduct



of their affairs. Evidence may also be admitted through a sworn statement.

- iv. The inmate shall be provided an opportunity to make a statement, offer explanation, defense, or rebuttal to the charge, and present documentary evidence at the hearing. The reasons for denying the inmate's request for such must be stated in writing. (ACA 4-4242) An inmate's defense shall be relevant to the specific charge and may be limited at the discretion of the hearing officer or board.

- 8. **Witnesses.** The inmate and the hearing officer or board shall have the right to request the testimony of witnesses at the hearing. (ACA 4-4242, 1-ABC-3C-09) No inmate witness will be required to testify against his/her will. Testimony may be obtained from witnesses in person, telephonically, or by sworn statement. WDOC staff, contract workers, or volunteers shall cooperate with all hearing officer requests to testify.

- i. Witnesses may be limited by the hearing officer or board if their testimony is determined to be irrelevant, incompetent, or unduly repetitious and that determination is documented in the record. The inmate may request testimony of persons who witnessed and/or investigated the conduct violations charged, whenever feasible, except when an inmate witness refuses to appear or testify. Refusal to testify shall be documented in writing by the refusing witness and/or the hearing officer. Such documentation shall be made part of the record of the hearing. The hearing officer or board may deny any inmate victim as a witness, based on protection of the witness from verbal or physical harassment. Any denial of a witness by the hearing officer, and the reason therefore, shall be made part of the record. (ACA 4-4242, 1-ABC-3C-09)

- a. The hearing officer or board may exclude the accused inmate during witness testimony if it is deemed to be necessary for confidential testimony, if the accused inmate's behavior requires such, or if necessary to protect the safety of the witness. Reasons for the inmate's absence or exclusion shall be documented. (ACA 4-4241)

- ii. In situations where the testimony made through an offer of proof (*i.e.*, the hearing officer or board asks the inmate to summarize what a proposed witness would say, if allowed to testify) is of a sort where further questioning of the absent witness is not necessary, the hearing officer can simply accept the offer of proof



as evidence and go on with the hearing without actually calling the witness.

- iii. In no event shall an accused inmate, or his representative, be allowed to question, or continue addressing questions to a witness, when it appears that the questions are primarily intended to harass the witness or are unduly repetitious or irrelevant.

9. **Use of Confidential Informants/Information.** If confidential witness testimony constitutes a portion of the evidence, the anonymity of the confidential witness will be maintained. The use of confidential informants shall be consistent with the procedure described in WDOC Policy and Procedure #1.014, *Investigations*. Confidential physical evidence or documentary evidence shall only be considered when it is probative to the facts of the incident from which the charges arise and disclosure of the evidence would pose a threat to the safety, security or good order of the institution.

- i. The testimony of the confidential witness will be documented thoroughly, stating the facts as submitted by the witness and the manner in which knowledge of those facts were acquired. Such documentation will be signed by the confidential witness and the staff member taking the testimony. Should the informant refuse to sign the statement, the staff member taking the documentation will document such refusal.
- ii. When using a confidential informant, staff shall use WDOC Form #103, *Confidential Informant Evaluation and Information Form*, to evaluate the reliability of the confidential witness and shall attach it to the confidential witness testimony. Evaluation of a confidential witness shall be done by a trained investigator.
- iii. Confidential testimony will only be used when it is determined by the investigator, disciplinary hearing officer or board that public testimony would present a danger to the safety of an informant or would divulge security sensitive information or operations.
- iv. Confidential information will not be accepted in exchange for avoiding charges, the granting or denial of privileges, or intervening in an inmate's current status.
- v. Reports from other agencies, such as police reports, or internal department reports, such as investigations reports, which are to be admitted at the hearing as a part of the evidence against an inmate



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #3.102	Page 10 of 25
		Inmate Disciplinary Procedures

shall be made available to the inmate for review prior to the hearing. Such reports shall be redacted in accordance with the law to protect confidential information including but not limited to the name or identity of a confidential informant. In such cases, the confidential information shall be removed from the report and the report provided to the inmate.

- vi. The hearing officer or board shall be notified by the charging staff member or the investigator if confidential information will be presented at the disciplinary hearing as a part of the evidence against the accused inmate. Such information shall be provided to the hearing officer or board prior to the hearing.
 - vii. If confidential information will be presented at the disciplinary hearing, the accused inmate shall be advised of such at least twenty-four (24) hours prior to the hearing. A summary of the confidential information shall be included in the *Conduct Violation Report* or be orally described by the hearing officer in general terms so as to protect the identity of a witness and inform the inmate of what evidence/information has been provided.
 - viii. The accused inmate may be excluded from the hearing during the testimony of any inmate whose testimony must be given in confidence and the reasons for the inmate's absence or exclusion must be documented. (ACA 4-4241)
10. **Errors.** Clerical errors in a completed WDOC Form #340, *Conduct Violation Report*, will not invalidate the report. Corrections may be made by the charging staff member, reviewing supervisor, investigator, hearing officer, or by a supervisor. Copies of corrections will be provided to the inmate. If the inmate could have not known of the correct information and the information is material to a determination of guilt, an additional twenty-four (24) hour preparation period will be offered and provided unless it is waived by the inmate. Items such as misspelled names, incorrect inmate identification number, or failure to put am/pm on reports are not always material and can be verified and corrected at the hearing without an extension.

B. Processing a Conduct Violation Report

1. **Conduct Violation Report.** Upon the reasonable belief that a violation of inmate conduct rules has occurred, any WDOC employee, contract staff member, or volunteer may prepare a disciplinary report and forward it to the designated supervisor. (ACA 4-4232, 1-ABC-3C-04) The charging



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #3.102	Page 11 of 25
		Inmate Disciplinary Procedures

staff member shall complete WDOC Form #340, *Conduct Violation Report*. Any other staff or volunteer who witnessed the misconduct or who has additional information about it shall complete WDOC Form #102, *Staff Report*.

- i. Disciplinary reports prepared by staff members include, but are not limited to identification of the specific rule(s) violated, a formal statement of the charge, any unusual inmate behavior, any staff witnesses, any physical evidence and its disposition, any immediate action taken, including the use of force, and the charging staff member's signature and the date and time of the report. (ACA 4-4233)
- ii. WDOC Form #340, *Conduct Violation Report*, will provide an inmate charged with a disciplinary rule violation a written statement of the charge(s), including a description of the incident and specific rules violated. (ACA 4-4236, 1-ABC-3C-06) The charging staff member shall ensure that WDOC Form #340 contains the elements of who, what, when, where and how before it is submitted.
- iii. At a minimum, WDOC Form #102, *Staff Report*, must be completed before the staff member leaves the shift, unless there are extenuating circumstances. The staff member shall complete WDOC Form #340, *Conduct Violation Report*, within twenty-four (24) hours of the incident, unless the violation is discovered through an investigative process or extenuating circumstances prevent such. The reason for any delay shall be documented. The WDOC Form #340 will be logged by the watch commander who will assign the report to a security supervisor. The security supervisor will review the WDOC Form #340 with the charging staff member to ensure that it is correctly prepared and complete. If necessary, the WDOC Form #340 will be corrected by the supervisor or returned to the writer for corrections.
- iv. WDOC Form #340, *Conduct Violation Report*, is not completed until after a supervisor has inspected it and ensures that all errors have been corrected, an appropriate investigation has been conducted (if necessary), and the report is ready to proceed.
 - a. Investigation of an alleged conduct violation may be conducted by staff at the time of observance or discovery of inmate misconduct. If a formal investigation is required, the matter may be referred to institutional investigators or



to the WDOC Investigations Unit. An appropriate investigation will begin within twenty-four (24) hours of the time the violation is reported and will be completed without reasonable delay, unless there are exceptional circumstances for delaying the investigation. (ACA 4-4234)

- b. The investigation of the alleged offense will normally be the responsibility of the facility where the offense occurred. The investigator is to act as a neutral party by making no determination of guilt or innocence. The investigator is responsible for gathering all relevant evidence and/or witness statements and will accept any documentary evidence submitted by the inmate during the investigation.
- c. Upon completion of the investigation, the investigator will submit an investigation report to the appropriate supervisor for affirmation. Upon affirmation of the offense, the inmate will be given notice of the charge(s) by service of WDOC Form #340, *Conduct Violation Report*.
- v. The inmate is considered “charged” upon receipt of notice of the offense. Notice of the offense is provided through service of WDOC Form #340, *Conduct Violation Report*.
- vi. A hearing shall be scheduled as soon as practical but no later than seven (7) days, excluding weekends and holidays, from the date the inmate is “charged” with the offense. (ACA 4-4238, 1-ABC-3C-07) To ensure fairness and the integrity of the disciplinary process, inmates charged with rule violations shall receive hearings as soon as possible unless the hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements. Reasons for all delays shall be documented.

2. **Service of the Conduct Violation Report.** WDOC Form #340, *Conduct Violation Report*, will be served to an inmate within forty-eight (48) hours after the report has been affirmed by the supervising staff member and charges have been lodged, or as promptly as practicable, but no less than twenty-four (24) hours prior to the disciplinary hearing. (ACA 4-4236, 1-ABC-3C-06) Upon ensuring the report has been correctly prepared, a security supervisor will meet with the inmate. The supervisor will inform the inmate of his/her rights. The inmate shall be informed that s/he will have an opportunity to make a statement at the disciplinary hearing. The inmate will be asked to sign WDOC Form #340 acknowledging notice of



the charge, his/her rights, and the date and time of the hearing. The supervisor will then forward WDOC Form #340 to the disciplinary hearing officer.

- i. If the violation is also a violation of state or federal law the supervisor is to read the inmate her/his rights prior to asking any questions of the inmate. It is essential that the inmate be informed of his/her rights prior to making any statement to staff. If the inmate refuses to sign WDOC Form #340 the supervisor shall sign WDOC Form #340, indicating the inmate's refusal.
- ii. The inmate shall be given a copy of WDOC Form #340, *Conduct Violation Report*, at the time of service, but in all cases shall receive a copy of the report at least twenty-four (24) hours prior to the disciplinary hearing. (ACA 4-4236, 1-ABC-3C-06) It will be the responsibility of the originating facility to ensure that the disciplinary process is completed within a reasonable time frame.
- iii. The inmate may waive the right to a disciplinary hearing and/or plead guilty. The staff member serving the inmate will ensure that the inmate understands that waiving the right to a hearing will constitute a plea of guilty. When the inmate waives a hearing or pleads guilty, there will be no hearing. The waiver or plea of guilty also constitutes a waiver of any appeal by the inmate of his/her guilt; however, the sanction may still be subject to appeal. Waivers or guilty pleas will be documented and reviewed by the deputy/assistant warden or designee. (ACA 4-4237, 1-ABC-3C-08)
- iv. If the hearing is not waived, the inmate will be notified of the time and place of the hearing at least twenty-four (24) hours in advance of the hearing, beginning at the time the inmate is provided notice by service of WDOC Form #340, *Conduct Violation Report*. (ACA 4-4238, 1-ABC-3C-07)

3. **Deferred Charging.** For general or minor conduct violations, and if appropriate, the supervisor may recommend a deferred charge of the conduct violation to the inmate and charging staff member. If the both the charging staff member and the inmate agree to the proposed action, the supervisor will document the deferment on WDOC Form #340, *Conduct Violation Report*, and submit it to be placed in the inmate's base file. This will be considered an information or counseling report and not count in the total of conduct violations that may determine an inmate's classification. If the inmate refuses the deferred charge, it will be noted on WDOC Form #340.



- i. A deferred charge means that the formal charging of the inmate with the alleged conduct violation will be held in abeyance (*i.e.*, suspended with no action taken) for six (6) months. If the inmate maintains good behavior during that time and does not commit any other conduct violation, the deferred charge will be dismissed. However, if the inmate does commit another conduct violation, then the deferred charge shall be imposed with service of the original WDOC Form #340, *Conduct Violation Report*, and the disciplinary hearing process.
 - ii. Acceptance of a deferred charge is not an admission of guilt. The inmate shall be entitled to the full disciplinary process upon the re-initiation of the deferred charge, including appeal.
 - iii. No classification action will be taken unless the conduct violation charge is re-initiated due to the commission of a new offense and the inmate is subsequently found guilty of the charge. Classification actions that consider disciplinary infractions within a defined time limit shall utilize the date of final approval of the WDOC Form #341, *Disciplinary Hearing Record*, by the Associate/Deputy Warden (*i.e.*, the date the inmate's guilty finding is affirmed) rather than the date of the infraction.
4. **Informal Resolution.** For general or minor conduct violations, and if appropriate, the supervisor may recommend an informal sanction, as authorized under WDOC Policy and Procedure #3.101, *Code of Inmate Discipline*. for the conduct violation to the inmate and charging staff member. If both the charging staff member and the inmate agree to the sanction, the informal sanction will be documented on WDOC Form #340, *Conduct Violation Report*, and the report shall be placed in the inmate's base file. The inmate shall receive a copy of the WDOC Form #340. This will be considered an information or counseling report and not count in the total of conduct violations that may determine an inmate's classification. If the inmate refuses the informal sanction, it will be noted on the WDOC Form #340.
 - i. No classification action will be taken unless the conduct violation charge is re-initiated due to non-compliance with the informal resolution and the inmate is subsequently found guilty of the charge. Classification actions that consider disciplinary infractions within a defined time limit shall utilize the date of final approval of the WDOC Form #341, *Disciplinary Hearing Record*, by the



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #3.102	Page 15 of 25
		Inmate Disciplinary Procedures

Associate/Deputy Warden (*i.e.*, the date the inmate's guilty finding is affirmed) rather than the date of the infraction.

- ii. If the inmate fails to complete or refuses to comply with the informal sanction after it is agreed upon, written notification will be made to the inmate's case work supervisor. The original WDOC Form #340, *Conduct Violation Report*, will be re-initiated with formal charges brought against the inmate. A notation will be made on the WDOC Form #340 that an informal sanction was agreed to but not completed by the inmate. The inmate will then be entitled to the full disciplinary process upon re-initiation of the charge.
- iii. Acceptance of the informal sanction shall indicate that the inmate does not contest the charge and shall preclude any appeal of the charge unless the charge is re-initiated because of failure to comply with the informal sanction.

C. Witnesses Requested by the Inmate. The inmate will be given the opportunity to make a statement and present documentary evidence to the investigator and the hearing officer or board. The inmate may request witnesses on the inmate's behalf. The reasons for denying such a request shall be documented in writing. (ACA 4-4242, 1-ABC-3C-09)

1. In regard to witnesses, the disciplinary investigator may elect to take statements in lieu of allowing direct testimony at the disciplinary hearing, disqualify a witness if testimony is not material to the offense (*e.g.*, character witness), or limit the number of witnesses if the testimony is repetitive and/or duplicative. The investigator may also disqualify any proposed witness who has no direct knowledge of the incident. Any discretionary action taken by the investigator as to a witness must be documented and attached to the Investigator's Report.
2. If the inmate does not wish to request or present witnesses it shall be documented in WDOC Form #340, *Conduct Violation Report*.
3. Reasonable attempts will be made to locate all identified witnesses. It is the inmate's responsibility to provide sufficient information to properly identify a potential witness. If an inmate refuses to identify a witness it will be the inmate's responsibility to gather any statements and provide them to the investigator. Such statements must be verifiable or will not be considered credible.



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #3.102	Page 16 of 25
		Inmate Disciplinary Procedures

4. Witnesses who decline to provide a statement will not be forced to provide a statement or made to testify.
5. The accused inmate may be excluded during the taking of witness testimony if warranted because of the inmate's behavior, the presentation of evidence that must be given in confidence, or if necessary to protect the safety of the witness providing testimony. The reasons for the accused inmate's exclusion from the hearing must be documented. (ACA 4-4241)
6. Inmates may request witnesses during the active investigation of the offense only. However, inmates may present witness statements directly to the hearing officer or board at the hearing. Such witnesses must be verifiable or may not be considered reliable by the hearing officer or board. If the inmate fails to request witnesses from the investigator and fails to provide any witness statements to the hearing officer or board, this constitutes a waiver by the inmate.

D. Assignment and Responsibility of Staff Representative

1. **Assignment of Staff Representative.** Any inmate may request the services of a staff representative; however a staff representative will be assigned only when an inmate is incapable of understanding the charge or presenting a defense due to language or cognitive impairment. (ACA 4-4243, 1-ABC-3C-11) Incapable of presenting a defense refers to the inmate's mental capacity to do so. The staff representative will assist prior to and during the hearing.
 - i. The determination of an inmate's mental capacity shall be made by an individual appropriately licensed and qualified to do so. All evaluations of mental capacity and the results thereof shall be documented.
 - ii. If a staff representative is assigned during the investigation, the inmate and the representative will be provided the opportunity to meet and prepare prior to the scheduled hearing. The assigned staff representative will document all meetings with the inmate.
 - iii. During an investigation, the investigator may request a mental health evaluation to determine whether the inmate is incapable of presenting a defense. An investigator shall document any evidence indicating whether the inmate is capable of understanding the charge. An investigator may request the services of an interpreter when evidence demonstrates a language barrier. The need for a



staff representative or interpreter will be documented in the Investigator's Report.

- iv. A list of trained staff representatives and interpreters will be maintained by the deputy/associate warden or designee. A list of staff representatives trained and experienced in matters concerning inmates with mental illness or cognitive impairments will be maintained by the deputy/associate warden or designee and assigned to inmates as needed.

- 2. **Responsibilities of the Staff Representative.** The staff representative will attend the disciplinary hearing with the inmate and will be impartial in representation of the inmate. The staff representative will:

- i. Consult with the inmate before the hearing;
- ii. Explain the charge against the inmate and the potential consequences;
- iii. Explain the ramifications of a guilty plea;
- iv. Assist the inmate in investigating and presenting evidence in the inmate's behalf;
- v. Question witnesses, except confidential witnesses, as necessary; and
- vi. Advocate for the inmate at the hearing to present the inmate's case.

E. Procedural Safeguards and Inmate Rights Regarding the Conduct Violation Hearing

- 1. The inmate shall be present at all stages of the hearing unless the inmate waives that right in writing or through their behavior, the inmate refuses to attend, the inmate is excluded for the protection of a requested witness, or the inmate is excluded during the presentation of confidential information. The reasons for the inmate's absence or exclusion shall be documented. (ACA 4-4241)
- 2. No staff member who submitted a report related to the conduct violation or who participated in the investigation of the alleged violation may participate in the adjudication of the disciplinary process.



3. The inmate may consult with private counsel, at his/her own expense, prior to the hearing; however, private counsel will not be allowed at any disciplinary hearing.
 - i. *Note:* An inmate does not have a right to a telephone call to his/her attorney as a result of this provision. Department and correctional facility rules regarding inmate telephone use shall determine whether an inmate may be allowed to contact his/her attorney by phone.
 4. An inmate who is appearing before a disciplinary hearing officer or board may consult with and be represented by a staff representative, if appointed pursuant to this policy.
 5. The inmate shall receive a copy of WDOC Form #340, *Conduct Violation Report*, and copies of any written information which the disciplinary hearing officer or board will admit as evidence at the disciplinary hearing, unless disclosure of such information would threaten prison security and good order, or endanger any individual. Reasons for nondisclosure shall be documented. In cases where written information is not disclosed, the contents may be summarized for the inmate to the extent that institutional and personal safety is not jeopardized.
 6. All disciplinary hearings shall be recorded. Recordings of conduct violation hearings are confidential. The recordings will be retained for one (1) year unless possible criminal charges are pending or the matter is subject to any other court action.
 7. If the violation involved possible criminal misconduct, the inmate shall be advised that he/she may remain silent. The violations shall be read and the inmate shall plead to the charge. Silence shall be considered as a plea of not guilty. The warning shall be documented in WDOC Form #341, *Disciplinary Hearing Record*.
- F. Plea Bargaining.** An alleged conduct violation may be plea bargained at the time it is heard by the disciplinary hearing officer or board (*e.g.*, a major offense may be plea bargained to a related general or minor offense, if appropriate). If an inmate enters into a plea agreement, the right to a hearing and appeal are waived. Any plea bargaining negotiations will be documented on WDOC Form #341, *Disciplinary Hearing Record*, and shall be a part of the record signed by the accused inmate and the disciplinary hearing officer.



1. An inmate may plead guilty to a charged offense under the condition that s/he receives an agreed to sanction. Such bargains shall be documented and the inmate waives his/her right to hearing and appeal.
2. No plea agreement or any terms and conditions thereof shall be of any force or effect unless reduced to writing and executed by signatures of both the accused inmate and the disciplinary hearing officer.

G. Disciplinary Hearings. Disciplinary hearings of conduct violations will be conducted by an impartial hearing officer or board who has had no direct involvement with the alleged incident of misconduct. (ACA 4-4240) Direct involvement shall include but not be limited to the observation of the incident, submission of a report regarding the incident, or investigation of the incident. A written record will be made of the decision and the supporting reasons.

1. The case against the accused inmate shall be presented through testimony of the charging staff member and any other necessary witnesses, by acceptance of the WDOC Form #340, *Conduct Violation Report*, as evidence, or both.
2. Inmates shall have the opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf; the reason for denying such a request shall be documented in writing. (ACA 4-4242, 1-ABC-3C-09)
3. Copies of WDOC Form #341, *Disciplinary Hearing Record*, will be distributed as follows:
 - i. Original will be maintained by the facility with a complete record of the disciplinary record and supporting documents;
 - ii. Copy will be provided to the offender;
 - a. *Note:* The copy of the record provided to the inmate shall be redacted to protect information that is confidential or protected by the law.
 - iii. Copy will be placed in the inmate's base file when completed. (ACA 4-4245, 1-ABC-3C-13)
 - a. *Note:* When conduct violation reports are dismissed or when an inmate is found not guilty of an alleged violation, the disciplinary report shall be removed from all of the inmate's files. (ACA 4-4246) The disciplinary record,



however, will be maintained by the facility for three (3) years from the date of the incident and then destroyed.

4. The disciplinary hearing will commence within seven (7) days from the date and time the inmate is formally charged with the conduct violation (*i.e.*, served notice of charges), excluding weekends and holidays. (ACA 4-4238)
 - i. Postponement or continuance of the hearing may be granted in writing for a reasonable period of time for reasonable cause. Any delay in the hearing will be documented, giving an approximate date and time of the rescheduled hearing. The offender will be provided a copy of such documentation.
 - ii. Documentation regarding the postponement/delay in the disciplinary hearing is only necessary if exceeding the seven (7) day time frame.
5. If the inmate has been transferred, the receiving facility may agree to hold the disciplinary hearing. Witnesses will be provided as necessary by the sending facility. Witnesses may appear in person, via teleconference, or may provide statements. All documentation will be made available by the sending facility at the hearing.
6. The entire disciplinary hearing will be recorded unless the inmate pleads guilty to the conduct violation. The recording will be maintained for one (1) year from the date of the final disposition of the matter, including appeal.
7. Only evidence presented during the hearing may be considered when determining guilt or innocence. (ACA 4-4244, 1-ABC-3C-12) An inmate's prior disciplinary record and the evidence presented during the hearing may be considered when determining discipline for an offense. An inmate's prior disciplinary record may be considered as evidence of habit or pattern of behavior in similar incidents, and can be used when considering the credibility of the charging staff member and/or inmate.
8. Any evidence the inmate has not seen prior to the hearing may be presented during the hearing and the inmate will be offered the opportunity to view it unless the information is confidential, in which case the inmate shall be provided with a summary of the confidential information. Such action will be documented in writing by the hearing officer.



9. The inmate will normally be present throughout the hearing unless the inmate waives that right in writing or through their behavior. The inmate may be excluded during the testimony of any inmate whose testimony must be given in confidence. (ACA 4-4241) The inmate may also be excluded during witness testimony when necessary for the protection of the witness. The reasons for the accused inmate's absence or exclusion from the hearing shall be documented in the disciplinary hearing record. (ACA 4-4241)
 - i. Deliberation by the hearing officer or board shall not be considered a part of the hearing and the inmate shall be excluded from any deliberation.
 - ii. Should the behavior of the inmate warrant removal from the hearing or denial of attendance, such removal or denial will be documented and included in the disciplinary hearing record. The hearing will proceed without the inmate present.
 - iii. If the inmate refuses to attend the hearing, it will be documented and the disciplinary hearing officer or board will impose discipline without a hearing, as the refusal to attend constitutes a waiver by the inmate to an opportunity for a hearing or an appeal.

H. Disciplinary Findings

1. Upon a finding of guilt, which shall be based upon the preponderance of the evidence, the offender will be informed of the evidence relied upon for such finding, the basis for the discipline imposed, and the opportunity to appeal. Such findings will be documented on WDOC Form #341, *Disciplinary Hearing Record*.
 - i. The finding of guilt on the WDOC Form #341, *Disciplinary Hearing Record*, must be documented by a written statement by the disciplinary hearing officer and a copy provided to the inmate. The reasons must point out the essential facts upon which inferences were based, mentioning what evidence the charging staff member relied on. (ACA 4-4245, 1-ABC-3C-13) The statement regarding the evidence relied upon for the finding of guilt shall indicate the offending behavior of the inmate.
 - ii. The discipline will be imposed in accordance with the sanction guidelines established in WDOC Policy and Procedure #3.101, *Inmate Code of Discipline*.



2. Should there be a finding of not guilty and no rehearing is ordered by the Associate/Deputy Warden, the disciplinary report will not be placed in the inmate's file and will not be used to discipline the inmate. (ACA 4-4246) The disciplinary record shall be maintained by the facility for three (3) years from the date of the incident and then destroyed.

I. Review of Disciplinary Actions

1. The Associate/Deputy Warden will review all disciplinary actions within five (5) days or as promptly as practicable after completion of the hearing to assure conformity with policy and appropriateness of any sanctions. (ACA 4-4247) The Associate/Deputy Warden may affirm or modify sanctions, dismiss charges, or require that the matter be remanded for rehearing or further investigation.
 - i. The Associate/Deputy Warden may order a rehearing on a finding of not guilty or if a charge is dismissed by the disciplinary hearing officer if he/she determines that there is any cause to do so.
 - ii. The Associate/Deputy Warden will document his/her review on WDOC Form #341, *Disciplinary Hearing Record*. The record shall be considered complete upon the review and signature of the Associate/Deputy Warden.
 - iii. The inmate shall receive a copy of the final record which shall notify the inmate of the right to appeal and the process for doing so.
2. Upon completion of disciplinary action resulting in a finding of guilt which has been reviewed by the Associate/Deputy Warden, notice will be forwarded to appropriate personnel for immediate classification action.
3. Sanctions will be effective immediately upon approval of the WDOC Form #341, *Disciplinary Hearing Record*, by the Associate/Deputy Warden.

J. Appeal Process

1. Following a disciplinary hearing, the inmate shall be advised of his/her right to appeal. The inmate shall have fifteen (15) calendar days after notice of a final decision to submit an appeal to the Warden. The Warden will issue a decision on the appeal within thirty (30) calendar days of receipt from the inmate. (ACA 4-4248, 1-ABC-3C-14)



- i. A plea of guilty to a conduct violation charge may not be appealed; however, the inmate may still appeal the sanctions imposed if the inmate believes that sanction imposed was not proportionate to the rule violation.
 - ii. Any waiver by an inmate, including the consequences thereof, cannot be appealed.
 - iii. If an inmate agrees to an informal resolution or a deferred charge, the inmate cannot appeal the informal sanction or the deferment. However, if the process is re-initiated due to inmate non-compliance, the inmate may appeal the final resolution or sanction as allowed in the regular disciplinary process.
 - iv. Plea bargain agreements that have been reduced to writing may not be appealed.
 - v. Neither classification decisions nor the removal/withholding of good time may be appealed through this process as these actions are not disciplinary actions. Such actions may rely upon the outcome of disciplinary hearings, so matters related to the underlying offense and hearing may be appealed.
 - vi. The inmate's appeal must be received in the Warden's office within the required time frame.
 - vii. Time frames for answering appeals may only be extended due to exceptional circumstances and will be documented in the appeal response.
2. The grounds for an appeal shall be limited to whether there was substantial compliance with institutional standards and procedures in handling inmate discipline, whether the charge(s) for which the inmate was found guilty was supported by the evidence, whether the disciplinary hearing officer or board's decision was based on a preponderance of the evidence, or whether, under the circumstances, the sanction imposed was proportionate to the rule violation.
3. Any inmate submitting an appeal will specifically state the grounds for the appeal. Issues not raised are waived. Inmates shall use WDOC Form #342, *Inmate Disciplinary Appeal Form*, to file appeals of disciplinary matters.



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #3.102	Page 24 of 25
		Inmate Disciplinary Procedures

4. After reviewing the case of appeal, the Warden may take the following actions on decisions made by the hearing officer or board: remand for rehearing, reduce the sanction, affirm the decision, or dismiss the violation. The sanctions cannot be increased.
 - i. Dismissed violations will be retained in the associate/deputy warden's office and will not be made a part of the inmate's record.
 - ii. If a rehearing is ordered, it shall be conducted within thirty (30) calendar days from the date of the order, unless circumstances dictate otherwise. The same hearing officer or board can conduct the rehearing unless ordered otherwise. The level of discipline cannot be increased as a result of the rehearing. A copy of the first disciplinary hearing paperwork will be attached to and accompany the rehearing paperwork.
5. The Warden's response will address issues raised by the inmate related to the issues raised on appeal and only to those issues that have grounds for an appeal. If no issue raised by an inmate on appeal has grounds for appeal, the appeal shall be dismissed.
6. The inmate will be provided with a copy of the Warden's written decision. The Warden's decision on all appeals is final.
 - i. The final decision of the Warden cannot be grieved through the inmate grievance procedure.
 - ii. The original of the entire offense report and all related material, to include the appeal, will be maintained at the facility.

V. TRAINING POINTS

- A. What happens if the inmate conduct violation is also potentially a violation of criminal law?
- B. What is due process of law?
- C. TRUE OR FALSE? Disciplinary hearings may be held before a single hearing officer or a three (3) member board at the discretion of WDOC
- D. What is pre-disciplinary segregation?
- E. What is the burden of proof is a disciplinary hearing?



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #3.102	Page 25 of 25
		Inmate Disciplinary Procedures

- F.** Can evidence be excluded from a hearing?
- G.** Can confidential testimony/information be considered at a hearing? How must this information be conveyed to the accused inmate?
- H.** What is a conduct violation report? How is it to be completed?
- I.** How is an inmate served notice of charges?
- J.** What is deferred charging? How long must an inmate be free of disciplinary problems before the deferred charge will be dismissed?
- K.** What is informal resolution? What happens if the inmate fails to comply with the informal resolution?
- L.** What is a staff representative and when must an inmate be provided with one?
- M.** What rights does an inmate have in the disciplinary procedure?
- N.** Can an inmate be excluded from a disciplinary hearing?
- O.** What administrative review is provided after the disciplinary hearing?
- P.** What are the grounds for an appeal?